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June 23, 2023

BY ECF

The Honorable Valerie E. Caproni
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *E.L., individually, and on behalf of his child, S.L., a minor v. New York City
Department of Education and David C. Banks, 23-cv-2560-VEC*

Dear Judge Caproni:

I am the Assistant Corporation Counsel in the Office of Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, assigned to represent Defendants the New York City Department of Education and David C. Banks (collectively, the “Department”) in the above-referenced action. I write jointly with counsel for Plaintiffs to respectfully request that the Court extend the deadlines and adjourn the appearance currently scheduled in this action.

Plaintiff E.L. (the “Parent”) brings this action individually and on behalf of his child, S.L. (the “Student”), alleging that the Department did not comply with two final decisions in due process trials concerning the 2018-19 and 2019-2020 school years after the Parent had submitted requests for implementation to the Department. (*See* Complaint (Dkt. No. 1) at ECF pp. 1-5.) Specifically, Plaintiffs allege that the Department did not reimburse the Parent for related services from September 1, 2017 through June 30, 2019, including reading specialists, math and reading tutors, and speech therapists, and did not reimburse or directly pay the Student’s tuition at the Shefa School (“Shefa”), a private educational institution, for the 2019-20 school year, despite Plaintiffs’ submissions and requests for payment to the Department upon receipt of the decisions awarding such relief. (*Id.* at ECF pp. 1-2.) Plaintiffs request, *inter alia*, that the Court enjoin the Department to issue those payments, and that the Court award Plaintiffs their reasonable attorneys’ fees and costs in connection with the underlying administrative proceedings and this action. (*Id.* at ECF page 8.)

By letter motion dated April 18, 2023, the Department requested, with Plaintiffs' consent, that the Court (1) extend Defendants' time to respond to the Complaint, from April 25, 2023 to June 26, 2023; and (2) adjourn the Initial Pretrial Conference ("IPTC") and extend the related joint letter deadlines to dates after the as-extended deadline to respond to the Complaint. (Dkt. No. 11.) By Order dated April 18, 2023, Your Honor granted those requests, extending Defendants' deadline to respond to the Complaint to June 26, 2023; and ordering the parties to submit, by July 10, 2023, a joint letter indicating whether an IPTC would be helpful and, if so, to submit, by July 20, 2023, a pre-IPTC joint letter and proposed case management plan and to appear for the IPTC on July 28, 2023. (Dkt. No. 12.) In that Order, Your Honor further noted in bold that "[g]iven the generousness of this timeline, the Court is unlikely to grant any further extension or adjournment requests." (*Id.*)

Following the above, the Department issued tuition payments in full as to the Shefa School for the 2019-20 school year, but it determined that it required additional information and documentation from Plaintiffs in order to implement the order for related services from September 1, 2017 through June 30, 2019. In response, Plaintiffs' counsel provided various documents regarding services rendered and proof of payments for such services. Following that submission, the Department's Implementation Unit ("IU") requested further documentation from Plaintiffs' counsel. The Department maintains that it stands ready to issue the outstanding payments upon receipt of the requested information and documentation. Plaintiffs and their counsel are reviewing IU's requests and will comply and respond accordingly.

The parties respectfully acknowledge Your Honor's prior statement that further extension or adjournment requests would not likely be granted. However, the parties remain optimistic that they can resolve Plaintiffs' implementation claims without need to burden the Court's resources, after which they would jointly work on a resolution of Plaintiffs' attorneys' fees, costs, and expenses for legal work on the administrative cases under the IDEA, as well as for this action. Given their efforts and communications to date, which reflect that shared goal and cooperative approach to achieving it, the parties respectfully request that the Court extend the Department's deadline to respond to the Complaint by 30 days, to July 26, 2023¹ and the parties' deadline to submit a joint letter indicating whether an IPTC would be helpful by 30 days to August 9, 2023. In the event that the parties determine that an IPTC would be helpful, the parties respectfully request that the Court extend their deadline to submit a joint letter and proposed case management plan by approximately 30 days to August 21, 2023, and that the Court adjourn the IPTC by approximately 30 days to August 28, 2023.

The parties also acknowledge and regret that this request does not accord with Rule 2(C) of Your Honor's Individual Practices in Civil Cases, which requires that a request for extension be made at least 48 business hours prior to the current deadline. Yesterday, the parties agreed to jointly request an extension and adjournment, and they circulated an initial draft of this joint letter. However, this letter was not finalized until today.

¹ Counsel for the Department additionally notes that he has been summoned to appear for jury duty service on June 26, 2023, the Department's current deadline to respond to the Complaint. As counsel has previously postponed this jury duty appearance, it is uncertain whether a request for a further postponement would be granted.

Thank you for your consideration of these requests.

Respectfully,

/s/ _____
Darian Alexander
Assistant Corporation Counsel

CC: BY ECF
all counsel of record

Application GRANTED in part. In light of the parties' significant settlement progress, Defendant's deadline to respond is hereby extended from June 26, 2023 to **July 26, 2023**. The parties' deadline to submit a joint letter indicating whether an IPTC would be helpful is extended from July 10, 2023 to **August 9, 2023**. In the event that an IPTC would be helpful, the parties' deadline to submit a pre-IPTC joint letter and proposed case management plan is extended from July 20, 2023 to **August 17, 2023**. The IPTC scheduled for July 28, 2023 at 10:00 A.M. is hereby adjourned to **August 25, 2023 at 10:00 A.M.**

SO ORDERED.

 06/26/2023

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE